

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SERGIO ALVAREZ,

Plaintiff,

v.

MORRIS SHEA BRIDGE COMPANY,

Defendant.

No. 1:24-cv-00723 JLT BAM

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PLAINTIFF'S MOTION TO REMAND, AND
GRANTING DEFENDANT'S MOTION TO
DISMISS WITH LEAVE TO AMEND

(Docs. 7, 8, 15)

Sergio Alvarez seeks damages against Morris-Shea Bridge Company, Inc. for retaliation. (*See generally* Doc. 1-3.) Morris-Shea removed the action from Fresno County Superior Court based on diversity of citizenship. (Doc. 1.) Plaintiff objected to removal. (Doc. 7.) On June 26, 2024, Morris-Shea filed a motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. 8.) The Court referred the motion to the Magistrate Judge for preparation of findings and recommendations. (Doc. 9.)

On August 5, 2024, the Magistrate Judge issued Findings and Recommendations that recommended: (1) Plaintiff's objections to removal be overruled and, as construed, Plaintiff's motion for remand be denied, (2) Morris-Shea's motion to dismiss be granted, and (3) Plaintiff's Complaint be dismissed without prejudice and with leave to amend. (Doc. 15.)

The Court served the Findings and Recommendations on all parties on August 5, 2024, and notified them that any objections were due within 14 days. (Doc. 15 at 6.) The Court also

1 informed the parties that “the failure to file objections within the specified time may result in the
2 waiver of the ‘right to challenge the magistrate’s factual findings’ on appeal.” (*Id.* at 6-7, quoting
3 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).) Plaintiff filed objections on August 7,
4 2024. (Doc. 17.) Morris-Shea did not respond to the objections.

5 According to 28 U.S.C. § 636 (b)(1)(c), this Court conducted a *de novo* review of the case.
6 Having carefully reviewed the entire matter, including Plaintiff’s objections, the Court concludes
7 that the findings and recommendations are supported by the record and proper analysis. In his
8 objections, Plaintiff contends that this case should not be dismissed. He also appears to include
9 additional allegations related to his claims. As recommended by the Magistrate Judge, the action
10 will not be dismissed at this time and Plaintiff will be granted an opportunity to amend his
11 complaint for damages. Accordingly, the Court **ORDERS**:

- 12 1. The Findings and Recommendations issued on August 7, 2024 (Doc. 15) are
13 **ADOPTED**.
- 14 2. Plaintiff’s objections to removal are **OVERRULED** and, as construed, Plaintiff’s
15 motion to remand is **DENIED** (Doc. 7).
- 16 3. Morris-Shea’s motion to dismiss (Doc. 8) is **GRANTED**.
- 17 4. Plaintiff’s Complaint is **DISMISSED** without prejudice and with leave to amend.
- 18 5. Plaintiff shall file an amended complaint within 21 days of the date of service of this
19 order.
- 20 6. Plaintiff is advised that the failure to file an amended complaint by the above deadline
21 will result in dismissal of this action without further notice.

22
23 IT IS SO ORDERED.

24 Dated: **August 27, 2024**


UNITED STATES DISTRICT JUDGE